IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 830 OF 2006
IN
NOTICE OF MOTION NO. 3353 OF 2006
IN
SUIT NO. 2802 OF 2006

M/s. Dhanraj Developers] .. Appellants (Ori.Plaintiffs)

Versus

1. Khimji Chatrabhuj & 8 ors.] .. Respondents

Mr. P.K. Samdani, senior counsel with Mr. Kishore Merhant i/b M/s. Kishore Thakordas & Co. for the appellants.

Mr. T.N. Subramanian, senior counsel with Ms. V. Mirasee i/b M/s. Shah & Sanghvi for the respondents No.1 to 8.

Ms. V.S. Kelwe i/b Ms. Manisha Kapadia for respondent No.9.

CORAM: R.M. LODHA, &
S.A. BOBDE, JJ.

DATED: 23RD NOVEMBER, 2006

P.C. :

. We heard Mr. P.K. Samdani, the senior counsel for the appellants for some time and perused the agreement (Exhibit-G). We also perused the impugned order.

2. *Prima facie*, it appears to us that the

agreement is development agreement. That is the title given to the agreement. Clause 1 of the agreement also starts with the expression, "The owners do hereby grant development rights unto the developers in the property described in the Ist and IInd Schedule ....". This Court has consistently taken the view that the agreement in the nature of development agreement is not capable of specific performance. Besides that, for the reasons given by the learned Motion Judge in the impugned order, with which we agree, we are satisfied that the plaintiffs (appellants herein) are not entitled to ad-interim relief.

3. Appeal is dismissed in limine.

4. We request the learned Motion Judge to hear and decide the Notice of Motion expeditiously and preferably within four months, if possible.

5. Needless to say that the observations made by us in this order and those in the order of the learned Motion Judge are only for the purpose of consideration of the ad-interim relief and shall not influence the consideration of the Notice of Motion.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]